



**Environmental
Protection Agency**

John R. Kasich, Governor
Mary Taylor, Lt. Governor
Scott J. Nally, Director

January 18, 2012

Mr. Jim Jurgensen
The Jurgensen Companies
11641 Mosteller Rd.
Cincinnati, OH 45241

RE: South Dayton Dump and Landfill Site, Moraine, Montgomery County, Ohio
Restrictions on digging at former landfills

Dear Mr. Jurgensen:

We are contacting you because you are a property owner of a portion of the former South Dayton Dump and Landfill. The purpose of this letter is to inform you of the requirement to obtain authorization from the Ohio EPA prior to filling, grading, excavating, building, drilling, or mining at, or within 300 feet of a landfill.

Recently, we came upon a potentially dangerous situation at one of the other properties at the landfill. A tenant in one of the buildings along Dryden Road contacted Time Warner to install an underground cable from the road to their building. We did not discover the activity until the utility workers had excavated into the waste in several locations, potentially exposing the utility workers to explosive landfill gases and contaminated waste material. A copy of the letter from Ohio EPA to the property owner in response to the excavations is attached.

The Agency's concern is for the protection of workers and also to ensure the proper management of any waste or potentially contaminated soil that is removed from the ground. To help explain the requirements, I have attached a copy of a guidance document on the issue. Please share this information with any tenants on your property as well.

Please contact me by telephone at (937) 285-6452, or by email at laura.marshall@epa.state.oh.us, if you have any questions regarding the attached documents, or if you plan any work at your property which would trigger these requirements

Sincerely,

Laura Marshall
Site Coordinator, Division of Environmental Response and Revitalization

Attachments

ec: Dan Crago, Valley Asphalt
Karen Cibulskis, U.S. EPA, Region V
Betty Arthungal, Division of Material and Waste Management



Implementation of "Rule 13" [OAC 3745-27-13]

PURPOSE

This educational guideline presents frequently asked questions about implementation of Ohio Administrative Code (OAC) 3745-27-13, also known as "Rule 13."

Rule 13 establishes the procedure for obtaining authorization from the director to fill, grade, excavate, build, drill, or mine on land where a hazardous waste or solid waste facility was operated.

FREQUENTLY ASKED QUESTIONS

Q1. Does Rule 13 apply to an unpermitted, unlicensed solid waste or hazardous waste facility?

A1. Yes. However, it does not apply to sites of indiscriminate roadside dumping or littering.

Q2. Does Rule 13 apply to just the limits of waste placement or area of hazardous waste treatment, storage and disposal?

A2. No. For the purposes of this rule, Ohio EPA defined 'facility' in OAC 3745-27-13(B), to also include any areas within 300 horizontal feet of the limits of waste placement if the filling, grading, excavating, building, drilling or mining might impact the integrity of the waste placement or the ancillary structures associated with the monitoring and operation of the facility. Ohio EPA is concerned about hazards associated with explosive gases generated by landfills, potential stability issues of the landfill, release of contaminated leachate to surface and ground water, and potential contact with waste materials previously disposed at the facility.

Thus, if your proposed activity is either within the limits of waste placement, or within 300 feet of

the limits of waste placement and it may impact the limits of waste placement, slope stability, or other ancillary structures such as the leachate collection, ground water monitoring, gas extraction systems, etc., then you are required to obtain a Rule 13 authorization unless the proposed activity meets the exemption criteria outlined in OAC 3745-27-13(C).

If your property contains a former hazardous waste facility, contact the Division of Hazardous Waste Management staff at your local district office regarding the applicability of Rule 13.

Q3. What is routine maintenance?

A3. Ohio EPA considers routine maintenance to be any activity necessary to maintain the performance of the cap system, pollution control systems, and monitoring systems at the site. For example, mowing the grass to maintain vegetative cover, replacing a ground water monitoring well that is no longer serviceable, or placing soil on the landfill in select areas to correct settlement problems or leachate outbreaks would be considered routine maintenance.

However, activities such as installing a perimeter leachate collection system, installing an explosive gas control system, or covering the entire landfill with soil, are not considered routine maintenance and would require a Rule 13 authorization unless the proposed activity meets the exemption criteria outlined in OAC 3745-27-13(C). These are only a few examples of the rule's application. If you believe your proposed activity may be considered routine maintenance, we recommend that you contact your district office to confirm this before initiating work activities.

Q4. Does Rule 13 apply to a facility in which all waste has been removed (i.e. a "clean closed"

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hazardous waste facility or a solid waste facility where all waste was removed)?

A4. No. If the facility meets the criteria established in OAC 3745-27-13(C)(1)(a), then Rule 13 does not apply.

Q5. Does Rule 13 apply to a site which is in post-closure care?

A5. Yes, if the activity is not authorized through the permit, license, plan approval, judicial order or other authorization that is a final action of the director. Authorizations that are not a final action of the director (e.g. alterations, authorizations by rule), cannot replace the need for a Rule 13 authorization.

Q6. Does Rule 13 apply to a site which is out of its post-closure care period?

A6. Yes. Unless the proposed activity meets the exemption criteria outlined in OAC 3745-27-13(C), a Rule 13 authorization will be required for any activity at a solid or hazardous waste facility that has completed its post-closure care period.

Q7. Does Rule 13 apply to RCRA treatment or storage facilities?

A7. It does not apply if the site has either (1) been clean-closed and no residual contamination exists on the property, or (2) been clean-closed by demonstrating successful decontamination through a human health-based risk assessment, under an unrestricted (residential) future land use scenario.

Rule 13 may apply if the site has been clean closed to risk-based standards and residual contamination exists, and the activity does not meet the exemption criteria outlined in OAC 3745-27-13(C). Rule 13 may also apply if a site under deed restrictions or other restricted future land use scenario where human health risk assessment was employed (i.e. an industrial scenario) and the activity meets the exemption criteria outlined in OAC 3745-27-13(C). It is recommended that you contact your local district office regarding any facility with one or more units

under evaluation by the risk assessment process prior to proceeding with the proposed activity.

Q8. Does Rule 13 apply to sites eligible for the Voluntary Action Program (VAP)?

A8. Yes, if the site accepted solid, hazardous, residual, or industrial wastes, as they are defined in rule, and if activities that do not meet the exemption criteria outlined in OAC 3745-27-13(C) are proposed for the site. Participation in the VAP does not exempt or preclude a site from the requirements of Rule 13. A Rule 13 authorization is required prior to initiating the work. If the operations and maintenance agreement doesn't contain a Rule 13 authorization for activities such as periodic sampling to confirm remedial progress, then Rule 13 authorization is required each time such work is performed.

Q9. Does Rule 13 apply if the facility's permit application indicated that the site will be utilized for "development" following the closure of the facility?

A9. Yes. Ohio EPA must have adequate information to determine that the proposed activity will not create a nuisance and is unlikely to adversely affect public safety, health, or the environment. Therefore, unless the proposed activity meets the exemption criteria outlined in OAC 3745-27-13(C), authorization pursuant to Rule 13 is required.

Q10. Does Rule 13 apply to open dumps?

A10. Yes. However, it is expected that all the illegally disposed waste on the property you control will be removed and disposed at a permitted disposal facility. If not, enforcement may be taken to clean up the dump.

Q11. What facilities does Rule 13 not apply to?

A11. Rule 13 does not apply to sites which have solely accepted wastes that are excluded from the definition of solid waste. The definition of "solid waste" is found in OAC 3745-27-01(S)(24) and excludes the following materials: earth or material from construction, mining or demolition

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operations, nontoxic fly ash and bottom ash, spent nontoxic foundry sand and slag. It is important to note, however, that if a facility disposed of this material with industrial solid waste, residual solid waste, or municipal solid waste, the facility is subject to Rule 13 unless the proposed activity meets the exemption criteria outlined in OAC 3745-27-13(C).

Rule 13 does not apply to facilities exempted from regulation as solid waste facilities. These exemptions are found in OAC 3745-27-03 and include: solid wastes generated within a single-family residence and disposed on the premises, junk yards, lime sludge and sewage sludge disposal approved under ORC 6111, and sites approved under ORC 6111 where certain wastes were land applied.

Although these facilities are not required to obtain a Rule 13 authorization prior to initiating work, they may be subject to requirements of ORC 6111. Contact a Division of Surface Water representative at your local district office to determine the type of authorization needed.

Q12. If the activity is in an area with a history of dumping, but it's not certain that waste will be encountered, does Rule 13 apply?

A12. Ohio EPA recommends the applicant take advantage of the provisions in OAC 3745-27-13(G) and conduct sampling and testing of the property to delineate any limits of waste in the area. If waste is encountered, the applicant can proceed with obtaining a Rule 13 authorization prior to conducting the planned activity.

Q13. What happens if waste is discovered while filling, grading, excavating, building, drilling, or mining on a site not known to be a solid or hazardous waste facility?

A13. Depending on the circumstances, you may be required to cease work and to obtain authorization pursuant to Rule 13 before undertaking any additional activities. Ohio EPA may also take enforcement action. If any liquid is released from the waste, pursuant to ORC 3750.06 *Emergency Planning*, you may be

required to immediately call Ohio EPA's emergency spill hotline at (800) 282-9378 (see http://web.epa.state.oh.us/nwdo/spill_reporting.htm for more information). Regarding the excavation of potentially solid or hazardous waste, you should immediately contact the appropriate Ohio EPA district office and local health department.

Q14. As part of authorized Rule 13 activities, do contaminated soils have to be managed as a solid waste?

A14. Contaminated soil associated with a Rule 13 authorization is a waste. The issue of whether contaminated soil is a waste is addressed through Ohio EPA Fact Sheet #0610 *Frequently Asked Questions About the Management of Soils*. This fact sheet is available on Ohio EPA's Web page at: www.epa.state.oh.us/dsiwm/pages/documents.html. If you are unable to obtain this fact sheet over the internet, contact your local district office to obtain a copy.

Q15. As part of authorized Rule 13 activities, can waste be reconsolidated or does it have to be removed and disposed at a permitted disposal facility?

A15. Illegally disposed waste should be removed and not reconsolidated. Otherwise, the waste may be reconsolidated in accordance with OAC 3745-27-13(H)(6). It must be placed within previously existing horizontal and vertical limits of waste placement. Waste cannot be used to backfill any excavated areas outside the limits of waste placement as per OAC 3745-27-13(H)(7).

Previously existing limits are established by the cap/closure certification report. If a certification report does not exist, the previously existing limits are established by the approved limits of waste placement. However, if the facility closed without reaching final grades, the approved limits would not be 'previously existing.' In which case, or if there are no approved limits for the facility, the previously existing limits are what are in existence when the Rule 13 authorization is requested (or notification sent).

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Q16. My project involves multiple properties where waste was disposed. Are separate requests for each property required, or can one request be submitted to address all of them?

A16. The division recommends submitting one Rule 13 request showing the entire project with a discussion of proposed procedures for identification, management, and closure. This saves you time by enabling you to follow the approved plan if waste is encountered rather than having to stop work while awaiting approval.

Q17. If a new solid waste, infectious waste, or construction and demolition debris facility is to be established on an old facility, are the authorizations for the new activity enough, or is a Rule 13 authorization also necessary?

A17. A Rule 13 authorization is required. However, if the authorization for the activity is granted through an action of the director (e.g. a permit or license, but not a registration), you have the option of either obtaining two separate actions, one for the new facility and one for the Rule 13 activities, or addressing the Rule 13 issues in the new facility application, thus combining the two actions into one.

Q18. Who do I contact for more information?

A18. If you have questions about this document, would like additional information regarding this topic, or have questions about other issues, you can contact your local Ohio EPA district office at the phone numbers listed below. To find your

district, please refer to the map at the end of this document.

POINT OF CONTACT

Central District Office DSIWM Supervisor
(614) 728-3778

Northeast District Office DSIWM Supervisor
(330) 963-1200

Northwest District Office DSIWM Supervisor
(419) 352-8461

Southeast District Office DSIWM Supervisor
(740) 385-8501

Southwest District Office DSIWM Supervisor
(937) 285-6357

Central Office Processing and Engineering Unit
(614) 644-2621

DISCLAIMER

The procedures set out in this document are intended solely for guidance of government personnel. The procedures are not intended and cannot be relied upon to create rights, substantive or procedural, enforceable by any party against Ohio EPA. While this guidance document is not legally binding, all statutes and rules referenced herein are binding and enforceable. Ohio EPA reserves the right to vary this guidance or to change it at any time without public notice and also reserves the right to deviate from this guidance on a case-by-case basis.



**Environmental
Protection Agency**

John R. Kasich, Governor
Mary Taylor, Lt. Governor
Scott J. Nally, Director

December 30, 2011

CERTIFIED MAIL

Margaret C. Grillot &
Kathryn A. Boesch
204 Whispering Wind Ct.
Englewood, OH 45322

Re: Unauthorized subsurface activity at South Dayton Dump, 2003 Dryden Road,
Montgomery County

Dear Ms. Grillot & Ms. Boesch,

On December 14, 2011 Betty Arthungal and Laura Marshall of Ohio EPA, Southwest District Office, inspected the above referenced property to investigate information provided by USEPA contractor, CH2M Hill that a utility mark out was taking place between Parcels 5171 and 5172 in order to install an underground line for Time Warner Cable from Dryden Road to Building 2 on Parcel 5172. The utility workers were digging holes to identify the location of gas lines. The holes were dug approximately 4-5 ft. below the ground surface.

Ohio EPA investigated this report out of concern for the potential for the utility workers to encounter explosive landfill gases and contaminated waste material. We found the situation as CH2M Hill had described. There were six small excavations where the installers had cleared their path for other utilities and for access points for the horizontal drilling. They had already completed their excavating and drilling work and were ready to complete the cable line connections. The cable underground line route follows a path from the northeast corner of the building at 2005 Dryden Road (currently Bull's Eye Amusements) to the southeast corner of the building at 1951 Dryden Rd (B & G Trucking). Since the excavations were in the driveway and parking area of B & G Trucking, which is heavily trafficked by large vehicles and leaving the holes open would be a safety hazard, we did not contradict the installers plans to back fill the holes with the excavated material and bring them back to grade.

Please be advised that such activities are prohibited by Ohio solid waste rules without obtaining prior authorization from the Ohio EPA, and are subject to requirements in Ohio Administrative Code (OAC) 3745-327-13 which states:

"(A) No person shall, without authorization from the director, engage in filling, grading, excavating, building, drilling, or mining on land where a hazardous waste facility or solid waste facility was operated.

Margaret C. Grillo & Kathryn A. Boesch
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(B) "Facility," for the purposes of this rule, means:

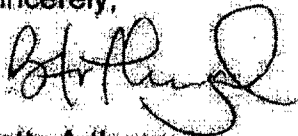
- (1) The limits of solid waste placement, solid waste handling area, or area of hazardous waste treatment, storage, or disposal.**
- (2) Those areas within three hundred feet of the limits of solid waste placement or area of hazardous waste treatment, storage or disposal..."**

Ohio EPA hereby advises the owners of this property that any future such activities by the owners, or their representatives, or their tenants must comply with all applicable environmental regulations.

Nothing in this letter shall be construed to authorize any waiver from the requirements of any applicable state or federal laws or regulations. This letter shall not be interpreted to release the owner or operator, or others, from responsibility under Chapters 3704, 3714, 3734, or 6111 of the Ohio Revised Code or under the Federal Clean Water Act, Resource Conservation and Recovery Act, or Comprehensive Environmental Response, Compensation, and Liability Act for remedying conditions resulting from any release of contaminants to the environment.

If you have any questions, please contact me or Laura Marshall by telephone at (937) 285-6357.

Sincerely,



Betty Arthungal
Division of Materials & Waste Management

BA/tr

Attachment: Considerations for Development On or Adjacent to a Closed Solid Waste Landfill

cc: Timothy D. Hoffman
Kathy Jackson/SWDO file

cc: Paul Stuart, PHDMC
Laura Marshall